

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

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5 UNITED STATES OF AMERICA)
)

6 vs.

7 SCOTT BARNES, Rochester, New York
) December 18, 2023

Defendants.

3:30 p.m.

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9 **DETENTION HEARING**

10 TRANSCRIPT OF PROCEEDINGS

11 BEFORE THE HONORABLE ELIZABETH A. WOLFORD
UNITED STATES DISTRICT JUDGE

12

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22

23

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3 * P R O C E E D I N G *
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6 THE CLERK: We're on the record in the
7 matter of the United States versus Barnes, 23MR551.

8 THE COURT: Good afternoon, everybody. Why
9 don't we first have appearances for the record?

10 MR. COOPER: Sure. For the United States,
11 Nicholas Cooper, Joseph Tripi, Casey Chalbeck and our
12 paralegal Karen Champoux. Good afternoon.

13 THE COURT: And on behalf of the defendant?

14 MR. COTTER: David B. Cotter on behalf of
15 Scott Barnes.

16 THE COURT: And are you Scott Barnes?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And you can stay seated. Are
19 you represented by Mr. Cotter?

20 THE DEFENDANT: Yes.

21 THE COURT: Mr. Barnes, I'm the district
22 judge that has been assigned to the appeal, at least, to
23 the Magistrate Judge's determination and Officer Nenni.

24 PROBATION: Yes, your Honor.

25 THE COURT: And Officer Zeller is here from
probation. I appreciate that you're appearing on behalf

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2 the Buffalo probation officer who prepared the bail
3 report. But let me ask probation this question, and if
4 you don't know the answer to the question, if you could
5 find out before the end of this, has probation's opinion
6 or recommendation changed at all with respect to the
7 defendant's release?

88 PROBATION: No, it has not, your Honor.

12 So go ahead, Mr. Cooper.

13 MR. COOPER: Thank you, Judge. So, first of
14 all, we provided some exhibits to defense counsel and to
15 Magistrate Judge Schroeder.

16 THE COURT: I haven't -- I saw an e-mail
17 that Mr. Tripi sent to Judge Schroeder's Chambers, which
18 appeared to be exhibits that were used during Mr.
19 Ermin's detention hearing, but I don't think I've seen
20 anything specific to Mr. Barnes. I've read the
21 transcript of the appearance concerning Mr. Barnes.
22 I've read the Criminal Complaint and I've read the bail
23 report, but I think that is pretty much the extent of
24 what I have. And then I guess I have your appeal and
25 then I also have Mr. Cotter's motion that was filed with

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2 respect to personal property and we'll address that
3 today.

4 MR. COOPER: Yes, Judge. So with respect to
5 the exhibits, Mr. Ermin's detention hearing was run
6 immediately before Mr. Barnes' detention hearing.

7 THE COURT: And I should be clear, I've read
8 both transcripts.

9 MR. COOPER: Yes, Judge. And so at the
10 beginning --

11 THE COURT: I don't mean to interrupt you
12 again, but the transcript involving Mr. Barnes says that
13 it was in front of Judge McCarthy, but that, obviously,
14 was incorrect.

15 MR. COOPER: No, that is not correct. They
16 were both back to back in front of Judge Schroeder.

17 THE COURT: You should communicate with the
18 court reporter about fixing the cover page.

19 MR. COOPER: Yes, Judge. We'll make a note
20 of that. With respect to that transcript of Mr.
21 Barnes's detention hearing, the Court will note that at
22 the beginning of that proceeding the government
23 indicated that Mr. Cotter and Judge Schroeder had both
24 been present for the Government's proffer and for the
25 exhibits introduced for Mr. Ermin's detention hearing,

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2 and so we asked, in order to conserve some time that
3 afternoon, to incorporate by reference the exhibits and
4 the proffer by AUSA Tripi for Mr. Ermin's detention
5 proceeding and so that was considered by Judge Schroeder
6 and I have a binder containing all of the exhibits for
7 the court today and Mr. Cotter has had them since last
8 week. May I hand it up?

9 THE COURT: Yes. Thank you. Go ahead.

10 MR. COOPER: So the bases that the
11 government is moving for detention, there are several,
12 and then there is one in particular that I would like to
13 focus on more today. First of all, because 922(g) is
14 determined to be a crime of violence for the purposes of
15 the Bail Reform Act, consistent with the United States
16 v. Watkins in the Second Circuit, the government
17 believes that 3141(f)(1)(A) applies. Also,
18 3142(f)(1)(E) makes this a detention eligible case
19 because it's any felony that is not otherwise a crime of
20 violence that involves the possession or use of a
21 firearm. Under 3142(f)(2)(A), there is a serious risk
22 that this defendant will flee. And, finally, under
23 3142(f)(2)(B), a serious risk that such person will
24 obstruct or attempt to obstruct justice or threaten,
25 injure or intimidate a prospective witness or juror.

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2 THE COURT: What proof do you have of that?

3 MR. COOPER: So, Judge, those last two are

4 --

5 THE COURT: My question is related to the
6 obstruction of justice, because I've read the detention
7 hearing transcript and I don't think there is any
8 dispute that the Outlaw Motorcycle Club promotes in
9 writing the idea that they don't like snitches or people
10 that cooperate with law enforcement. But what evidence
11 do you have that this particular defendant would present
12 a serious risk of obstruction of justice?

13 MR. COOPER: So, Judge, the Outlaws
14 Motorcycle Club does more than just promote, in its
15 writing, as an organization first --

16 THE COURT: Look it, you don't have to spend
17 a lot of time on the Outlaws Motorcycle Club. I read
18 the transcript. I sat through a trial that lasted four
19 months that dealt with a motorcycle club, and the
20 Outlaws Motorcycle Club came up not infrequently during
21 that trial, but you need more than just having
22 membership in an organization to be able to suggest that
23 this defendant presents a serious risk of obstruction of
24 justice. So I want to know what evidence you have about
25 this defendant presenting a serious risk of obstruction

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2 of justice.

3 MR. COOPER: Yes, Judge. So in the
4 detention hearing before Judge Schroeder, the government
5 proffered about this defendant individually, his status
6 within that organization, and I think that is pertinent
7 to this question.

8 THE COURT: It is because, obviously, the
9 government can proceed by proffer in a detention
10 hearing, that is totally fine, and it's been endorsed by
11 the Second Circuit. But the judge who is presiding over
12 the detention hearing has an obligation to make an
13 assessment about the reliability of the evidence, even
14 if it's by proffer. And so you just standing up and
15 telling me, this guy is part of the bat group or
16 whatever they are called or a national enforcer, I need
17 more than you just telling me that. What are you basing
18 those statements on?

19 MR. COOPER: Your Honor, I spoke over the
20 weekend, actually, with an ATF, I believe his title
21 would be intelligence analyst, named Jeremy Sheets, and
22 that person has been proffered and accepted by district
23 courts across the country as an expert in outlaw
24 motorcycle gangs. To be clear, outlaw generally, not
25 the Outlaws specific, so encompassing outlaw motorcycle

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2 gangs.

3 THE COURT: You mean criminal motorcycle
4 gangs.

5 MR. COOPER: Absolutely, Judge. That is
6 probably a better way, not to get twisted up with the
7 language.

8 He has been determined to be an expert
9 involving criminal motorcycle gangs. During the
10 conversation I had with him this weekend, I spoke
11 specifically with that expert about the letters BBT,
12 what that signifies within the organization. And the
13 explanation that was provided to me by this expert was
14 that those letters signify an individual hand selected
15 within the organization that is known to be willing and
16 ready to undertake acts of violence on behalf of the
17 club to protect the interests of the club.

18 THE COURT: And so what is Mr. Barnes
19 association with those letters?

20 MR. COOPER: So, your Honor, Mr. Barnes has
21 been photographed wearing those letters on his club
22 paraphernalia. And I believe, as well, that he has a
23 tattoo with "BBT" on his body, although I can't confirm
24 that. If I could speak to cocounsel for a second.

25 THE COURT: When you said "wearing those

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2 letters," do you mean a t-shirt or a patch on a leather
3 jacket?

4 MR. COOPER: I believe both, Judge. And I
5 can confirm.

6 THE COURT: I think there is a difference
7 between a t-shirt and a patch.

8 MR. COOPER: I think with respect --

9 THE COURT: At least my understanding is
10 that in the motorcycle lingo, if they get bestowed a
11 patch, that they actually get put -- it's like a varsity
12 letter or something like that from high school days.

13 MR. COOPER: Yes, Judge. And the government
14 is proffering that the defendant has been bestowed that
15 status, I guess, for lack of a better word, within the
16 organization. I can confirm for the Court.

17 THE COURT: Why don't you go ahead.

18 MR. COOPER: Thanks.

19 So, your Honor, we're going to continue to
20 work today to confirm, the Court had specifically about
21 whether it's on the vest, the cut itself, and I'll get
22 back to your Honor with an answer to that question. I
23 would indicate to your Honor that part of what was
24 seized during the execution of the warrant at the Outlaw
25 clubhouse was letters from the defendant and other

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2 members of the organization that are currently
3 incarcerated in prisons across the country. And those
4 letter correspondence, this is the letters that the
5 defendant has received, not the letters that he sent
6 out. Obviously, we didn't seize those. In the letters
7 that he received, at least one of those members
8 corresponding with him indicated that he also was a
9 member of the BBT, essentially responding to how Mr.
10 Barnes had identified himself in his letter.

11 THE COURT: Do you have that letter?

12 MR. COOPER: It's not in the binder, but the
13 government does have the letter, it's been seized.

14 THE COURT: Do you have a date for when that
15 letter?

16 MR. COOPER: A date from when it was sent?

17 THE COURT: Yes.

18 MR. COOPER: No, your Honor. I don't know
19 it offhand.

20 THE COURT: You made representations during
21 the detention hearing in front of Judge Schroeder that
22 Mr. Barnes was a high -- held a high-ranking position as
23 national enforcer within the Outlaws Motorcycle Club.
24 What is the basis for that statement?

25 MR. COOPER: So, Judge, there was

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2 photographs taken of Mr. Barnes wearing paraphernalia
3 associated with the Outlaws Motorcycle Gang that had a
4 bottom rocker. I'm sure the Court is familiar with it,
5 essentially the patch underneath the emblem in the
6 center, and it represented a United States bottom rocker
7 as opposed to what is traditionally seen as being a New
8 York or Florida, it was a bottom rocker encompassing
9 United States.

10 THE COURT: Anything other than that?

11 MR. COOPER: Not that I'm able to proffer to
12 the Court at this time, no.

13 THE COURT: Okay. So, excuse me, I'm sorry.

14 MR. COOPER: Judge, just to expound on what
15 was stated a moment ago. The agents investigating this
16 case and are familiar with the structure of this
17 organization have indicated that that bottom rocker, as
18 I indicated, carries significance with respect to the
19 defendant's position within the organization.

20 Additionally, there was a letter from Jack
21 Rosga, who is a former national president who was
22 indicted in the Eastern District of Virginia and
23 convicted of racketeering offenses related to his
24 membership and leadership of this organization, a letter
25 was seized indicating that Mr. Rosga was excited to hang

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2 out again with Tommy O, John Ermin, and Big Scott, this
3 defendant.

4 THE COURT: Big Scott.

5 MR. COOPER: Big Scott, One Percenter, which
6 is how he identifies himself or how he is identified
7 within the investigation.

8 THE COURT: Is that letter part of the
9 exhibits?

10 MR. COOPER: No, Judge.

11 THE COURT: That was seized from the search
12 of the clubhouse?

13 MR. COOPER: It was seized, yes, Judge, from
14 the clubhouse.

15 THE COURT: Okay.

16 MR. COOPER: And, again, just showing his
17 proximity in an organization with over 1,000 members,
18 his proximity to the former national leader of that
19 organization supports the conclusion that he is closely
20 associated with leadership of the organization.

21 THE COURT: Is there anything else that you
22 rely on to support the statement that he has this
23 high-ranking position within the organization.

24 MR. COOPER: Judge, I think that is the
25 extent of the information that we've proffered to the

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2 Court and that is the extent of the information that we
3 have at this time.

4 THE COURT: What about any other information
5 to support the statement that he is an enforcer or
6 somebody within the organization who engages in acts of
7 violence to promote the purposes of the organization. I
8 mean, because what I hear you saying, you're relying on
9 this expert witness who could opine that BBT stands for
10 somebody who is an enforcer, right? You're relying on
11 some photographs, we're not sure exactly what form, I
12 guess, the BBT insignia took of this defendant wearing
13 that, but we're not sure if it's a patch or a t-shirt or
14 what have you, and I think you're relying on a tattoo or
15 maybe you're not, I guess I'm unclear on that.

16 MR. COOPER: Judge, I believe that the
17 defendant has a BBT tattoo as well.

18 THE COURT: Do you know that?

19 MR. COOPER: I want to make sure I'm not
20 crossing up the two different defendants in my mind,
21 Judge, so without confirming it.

22 THE COURT: We're not sure about the tattoo?

23 MR. COOPER: And then the letter as well
24 with which I proffered to the Court.

25 THE COURT: The letter from the somebody who

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2 is incarcerated referencing him as a member of the BBT
3 and also from -- well, I guess, is it -- how do you
4 spell Rosga?

5 MR. COOPER: R-o-s-g-a.

6 THE COURT: R-o-s-g-a.

7 MR. COOPER: And if you want the case number
8 for that prosecution in Virginia, I can give you that.

9 THE COURT: Not particularly. But I guess
10 you have a letter from him to either Mr. Ermin or Mr.
11 Barnes, but that supports the notion that Mr. Barnes is
12 a high-ranking official, not necessarily that he is
13 somebody who engages in violence?

14 MR. COOPER: Correct, Judge, and leadership.

15 THE COURT: So I want to focus on the
16 evidence that you have to support the notion that Mr.
17 Barnes is part of the Outlaw Motorcycle Club or Outlaws,
18 is it "Outlaw" or "Outlaws"? I guess it's Outlaws.

19 MR. COOPER: It's with an S at the end.

20 THE COURT: Part of the Outlaws Motorcycle
21 Club engages in acts of violence, it's himself
22 identifying as a member of the BBT and others
23 identifying him or at least one other identifying him as
24 a member of the BBT. But do you have anything in terms
25 of eye witnesses to any actual violence that he is

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2 engaged in?

3 MR. COOPER: So, your Honor, over the
4 weekend, I was made aware by Special Agent Nick
5 Melchiorre of Homeland Security investigations of a
6 video. I haven't viewed the video of it myself. I
7 don't have possession of it, but Special Agent
8 Melchiorre represented to me of what he observes on the
9 video. It's from a restaurant in the Buffalo area. I'm
10 working to obtain the video. But, as I mentioned, I
11 don't have it. Yet and Special Agent Melchiorre
12 informed me that video shows, essentially, a
13 confrontation between the Outlaws Motorcycle Club and an
14 individual that is working as a cook at a local
15 restaurant, who is a member of a different motorcycle
16 club the Kingsmen.

17 THE COURT: This must have been a while ago,
18 right?

19 MR. COOPER: No, it was fairly recently,
20 within the last two years.

21 THE COURT: And Special Agent Melchiorre
22 informed me in that video, while the confrontation is
23 ongoing in the restaurant, that you can observe this
24 individual, Barnes, standing by the door, blocking the
25 door to the restaurant. To be clear, you don't see the

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2 defendant engaging or aiding in and act of direct
3 violence. But what you see, consistent with his role
4 that the government has proffered, is the defendant
5 essentially guarding the door and preventing the people
6 from exiting until the Outlaws finished their business
7 there, which was telling that Kingsman not to wear
8 colors in that territory. What leads to violence, as
9 the Court is well aware, which leads to violence over
10 and over again.

11 THE COURT: Was it violence that occurred in
12 the restaurant or just a verbal confrontation?

13 MR. COOPER: My understanding it was a
14 verbal confrontation, not a stabbing or assault.

15 THE COURT: And this Agent Melchiorre, he is
16 local? I mean, this is something you can get a copy of
17 the video?

18 MR. COOPER: He is local, Judge, and I'm
19 working. He has the video, I just don't have this
20 personally Melchiorre I want to be clear with the Court
21 I haven't reviewed it I'm relying on his representations
22 to me of what it obtains that is information I believe I
23 got on Saturday or Sunday.

24 M E L -- may I check?

25 THE COURT: You can take it out, that's

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2 fine.

3 MR. COOPER: M-e-l-c-h-i-o-r-r-e.

4 And to answer the Court's inquiry from
5 before, Mr. Barnes' vest does have a BBT patch on it and
6 Ms. Champoux can pull that up on the screen.

7 MR. TRIPPI: If I may. If I may. There are
8 over 600 photos for the hearing last week. We have more
9 available to us that are marked.

10 THE COURT: Has Mr. Cotter received them?

11 MR. COOPER: He probably hasn't seen this
12 one, but he'll be seeing it the same time as the Court.

13 THE COURT: I can see it. You can blow it
14 up. Okay. So this is a photograph of Mr. Barnes' vest
15 that was seized from the from the clubhouse.

16 MR. COOPER: That is correct, Judge. You
17 can see on the left-hand side of the photograph, which
18 would be the front right side of the vest, is a vest
19 with two firearms firing, "snitches are a dying breed,"
20 and on the left-hand side -- the right hand side of the
21 photograph is a patch that indicates B.B.T.

22 THE COURT: The "snitches are a dying breed"
23 I just can't see clearly from here. It's right there.
24 Now I see it. Thank you.

25 I had started out with a question about the

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2 serious risk of obstruction of justice. And it sounds
3 to me as though what you're saying, and I don't want to
4 misinterpret it, but what you're saying is because of
5 his role in an organization that the government believes
6 takes steps to stifle either individual's cooperating
7 with law enforcement or working with law enforcement,
8 that means that he would present a serious risk to
9 obstruction of justice. It's not as though you're
10 standing here telling me that you have any proof that
11 Mr. Barnes or any evidence that Mr. Barnes has actually
12 taken efforts to prevent witnesses from testifying or
13 cooperating with law enforcement.

14 MR. COOPER: Well, Judge, I think it's maybe
15 a little bit in between the two the Court just fronted.
16 What the statute requires, is it a serious risk that the
17 person will obstruct or attempt to obstruct, not that
18 it's happened before. First of all --

19 THE COURT: But you have to have evidence of
20 that?

21 MR. COOPER: Sure, Judge. And I think what
22 I would say, in addition to the organization and what it
23 stands for as a whole and what they made clear what it
24 stands for, snitches are a dying breed.

25 THE COURT: I'm going to tell you, the fact

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2 that someone is a member of the Outlaws Motorcycle Club
3 in and of itself, to me, does not equate with evidence
4 that someone presents a serious risk to obstruct justice
5 and you need more than that.

6 MR. COOPER: Sure. And I think we have more
7 than that. When we searched the clubhouse and searched
8 Mr. Ermin's house, what was obtained was numerous cases,
9 including an ongoing case in the Western District of New
10 York, new and old cases, which is evidence that the
11 organization is closely following cases they believe
12 they are related to. And I can speak to that in a few
13 different ways. First of all, I believe the Court
14 presided over the trial of the Kingsmen motorcycle club,
15 and I wasn't here, and I spoke with AUSA Tripi, who was
16 the prosecutor on the case, and it was my understanding
17 that the Outlaws Motorcycle Club.

18 THE COURT: I think the gentleman who sat
19 through the trial, who sat through the trial is here
20 today. I don't know who he is or what his role is, but
21 I recognize him.

22 MR. COOPER: His role is watching what goes
23 on in court on behalf of the organization.

24 THE COURT: But, you know, equating that
25 with obstruction of justice is not necessarily a clean

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2 connection.

3 MR. COOPER: Karen, can you pull up the
4 photos from Brazil?

5 I'm trying to find a specific exhibit to
6 direct the Court to.

7 It's going to be exhibit 1-EC and 1-ED.

8 THE COURT: Are they in the binder?

9 MR. COOPER: They are in the binder in the
10 one series. And Mr. Tripi indicated that.

11 MR. TRIPI: 1-AC and 1-AD.

12 MR. COOPER: 1-AC, okay.

13 THE COURT: Do you have them pulled up? I
14 just didn't want to connect too early.

15 MR. COOPER: So this was a photograph that
16 was seized at 41 Richmond in Lancaster, New York.

17 THE COURT: Which photo is this?

18 MR. COOPER: Which photo or residence?

19 THE COURT: Which photo.

20 MR. COOPER: 1-AB is on the screen right
21 now. You can see members wearing -- members of a
22 motorcycle club wearing cuts, patches with some blue
23 arrows pointed at certain individuals. And if you flip
24 that over, if you were to flip that photograph over,
25 you'll see what is depicted on 1-AD, and there is a

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2 sticky note affixed to the back of the photographs that
3 the blue arrows are supposed to be cops in the ABUTRES.
4 Again, showing, putting into practice, not just that the
5 organization talks about it, but they are actively
6 attempting to identify who they believe to be members of
7 law enforcement.

8 THE COURT: You're talking about the
9 organization. I guess that goes back to my point is
10 that, you need more to establish that this defendant
11 presents a serious risk of obstruction of justice than
12 the fact that he is a member of an organization that
13 engages in that type of activity.

14 MR. COOPER: So I would represent to the
15 Court, it's the government's position, certainly, that
16 the defendant's status in the organization coupled with
17 the organization's position on that constitutes a
18 sufficient risk.

19 THE COURT: And I think that goes back to my
20 question, it seems to me that what you're suggesting is
21 that because of the defendant's position, that the
22 government believes he has in the organization, coupled
23 with what the Outlaws Motorcycle Club does, that that,
24 in the government's mind, is sufficient evidence of a
25 serious risk of obstruction of justice. And that is why

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2 I was asking, it doesn't seem as though you have
3 anything that you can identify for me specific to this
4 defendant obstructing justice.

5 MR. COOPER: That's correct, Judge.

6 THE COURT: Okay. Okay. That is just what
7 I wanted to clarify.

8 MR. COOPER: Absolutely. And then if the
9 Court is okay with it, I'll move on to the next topic
10 that I have.

THE COURT: Sure.

12 MR. COOPER: With respect to 3142(f)(2), a
13 serious risk that such person will flee, the government
14 represented to Judge Schroeder, and I'll represent to
15 your Honor that the nature of this organization, this
16 criminal organization, is such that it poses a serious
17 risk that the defendant will flee for a few different
18 reasons.

19 First of all, because there is clubhouses in
20 the more than half of the states of this country and in
21 countries all over the world, including Asia, East
22 Europe, West Europe, South America. The defendant has
23 access to any of those clubhouses and the support of the
24 members of any of those clubhouses should he choose to
25 flee, so that distinguishes him significantly from the

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vast majority of defendants who appear in front of your Honor who have significant ties to the Western District of New York and who lack significant ties to other states or to other countries. In fact, I would submit that, at least in my eight years of being a prosecutor, I haven't encountered a defendant who has the reach that this defendant or Defendant Ermin have due to their membership in this organization.

10 And so the defendant was arrested sleeping
11 on the couch or not sleeping, was arrested coming out of
12 the clubhouse for the Outlaws in Buffalo. He
13 represented and represented in front of Judge Schroeder
14 as well that he had been essentially living in the
15 clubhouse. His wallet and gun were recovered on a
16 bedside table next to an area where an individual had
17 been sleeping.

18 THE COURT: I take it you're going to go
19 through that proof?

20 MR. COOPER: About the firearm?

21 THE COURT: Yes.

22 MR. COOPER: Absolutely. What I would like
23 to proffer with respect to the flight risk at the same
24 way he was crashing on a couch.

25 THE COURT: He was sleeping on a couch?

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2 MR. COOPER: Or a bed, sleeping in a
3 clubhouse as opposed to a more traditional residence.

4 THE COURT: Did he have a bed there?

5 MR. COOPER: I believe so. It has been
6 described as a sleeping area, so I don't want to specify
7 one way or the other. He indicated that he had been
8 living there to pretrial services, whether a couch or
9 bed, the important fact is he --

10 THE COURT: Don't say he was sleeping on a
11 couch if you don't know he was sleeping on a couch, Mr.
12 Cooper.

13 MR. COOPER: I misspoke. I don't intend to
14 be more specific than I can be. I'm clarifying, I don't
15 know a couch or bed. He was residing in a clubhouse and
16 the import of that, he has the ability to reside at any
17 other clubhouse. He is not from Western New York or
18 from Buffalo, he came down in approximately 2021 and
19 remained here as a guy living in the clubhouse. So that
20 access to clubhouses all over the world presents a risk
21 of flight that a normal defendant or a more common
22 defendant in this courtroom wouldn't have.

23 There is also the resources that belonging
24 to a large criminal organization like this gives an
25 individual. Because he doesn't need to personally have

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2 the money to flee, he has hundreds or thousands of other
3 members who can assist him wherever he goes in fleeing.

4 I'm having Ms. Champoux pull up a
5 photograph. And when it's done, I'll move on to address
6 the Court's question about the proof related to the
7 firearm. This is in Government's Exhibit 9 from the
8 prior detention hearing. We have 9-A up on the screen
9 right now. This is essentially an end table.

10 Ms. Champoux just zoomed in on the Glock
11 semi-automatic pistol that is contained in some sort of
12 soft holster on the table.

13 And then if you zoom back out, Ms. Champoux.

14 I spoke with the search leader from this
15 where this firearm was recovered today and that search
16 leader indicated to me that within four or five feet of
17 this firearm was the defendant's cell phone and the
18 defendant's wallet containing his Social Security card
19 and other identification documents and other documents.

20 THE COURT: Where was it in comparison to
21 this?

22 MR. COOPER: If you give me one second,
23 Judge. So the cell phone was recovered at the very top
24 of the stairs on a TV stand adjacent to the stairwell.
25 Approximately five feet from that cell phone is lain

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2 view on a table was the loaded Glock pistol, the
3 defendant's wallet and keys in the immediate vicinity of
4 the firearm.

5 THE COURT: Do you know where the wallet and
6 keys were? They are not depicted this photo, are they?

7 MR. COOPER: I don't believe so. I was
8 informed by Special Agent Keith Bender, who participated
9 in the search at this location, that they were all
10 within four or five feet from each other.

11 THE COURT: And where was this in comparison
12 to where it appeared that the defendant was sleeping?

13 MR. COOPER: It's my understanding that this
14 is the same area of the clubhouse, what is depicted in
15 9-A.

16 THE COURT: Do you have a larger picture of
17 this, though? I mean, because this really doesn't give
18 me much of a sense as to what the area was like.

19 MR. COOPER: I can check, Judge, give me one
20 second.

21 Judge, I just spoke with Special Agent
22 Marilyn Halliday, and she was present at the clubhouse.
23 She indicated that the room is essentially one large
24 room with a couch and an end table. On the end table,
25 you can see the firearm. In that same room is a bed,

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2 looks like.

3 THE COURT: Looks like we might have a
4 picture up here.

5 So the bed is behind the couch that is
6 depicted in 9-A. In other words, the couch that is in
7 9-A, is that the same couch that is on the right-hand
8 side of the photo that is being displayed right now?

9 MR. COOPER: Yes, Judge.

10 THE COURT: So the end table is presumably
11 just off camera a little bit to the right side of the
12 picture.

13 MR. COOPER: That is correct, Judge.

14 THE COURT: Okay.

15 MR. COOPER: And so there were totes,
16 according to Special Agent Halliday, there were totes
17 containing the defendant's clothes in the same room,
18 which you can see is sort of a large upstairs room. And
19 this is where the cut or the vest was recovered.

20 THE COURT: And where was the vest? Was it
21 in the same area?

22 MR. COOPER: It looks like Karen is trying
23 to zoom in on it.

24 THE COURT: It's hanging, but you can't see
25 it front on in the photograph, essentially.

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2 MR. COOPER: That's correct, Judge.

3 THE COURT: Ms. Champoux, can you zoom in on
4 the right-hand side of the picture? Do you know what I
5 mean? In other words -- exactly. Do we know what this
6 is? Looks like junk, but hard to make it out.

7 AGENT HALLIDAY: Clothing and storage
8 setting.

9 MR. COOPER: My understanding from the agent
10 that was present, clothing and storage.

11 THE COURT: Were there drugs found at the
12 clubhouse?

13 MR. COOPER: Steroids.

14 THE COURT: Any other drugs?

15 AGENT HALLIDAY: Marijuana.

16 MR. COOPER: Also marijuana, Judge.

17 THE COURT: And the steroids, were they
18 prescribed.

19 MR. COOPER: I can consult with the case
20 agent quickly. Thank you.

21 Judge, I think the parties are working on a
22 housekeeping matter with respect to putting a number on
23 this exhibit because it was not numbered for Judge
24 Schroeder.

25 THE COURT: We should put it on the vest as

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2 well.

3 MR. COOPER: To answer the questions about
4 the steroids, Special Agent Halliday informs me there
5 were various vials that didn't have a prescription and
6 needles around the vial. There is not a prescription
7 around the vials, but I don't want to definitively tell
8 the Court they were not.

9 THE COURT: And what was the quantity, if
10 you know, of the marijuana.

11 MR. COOPER: Not bulk distribution amounts
12 of marijuana. There was marijuana in a jar in the bar
13 area of the clubhouse.

14 THE COURT: Were there any drugs in this
15 living area?

16 MR. COOPER: That is where the steroids were
17 recovered, Judge.

18 THE COURT: And I'm looking, it's maybe just
19 hard for me to see, but on the left-hand side, I see the
20 bed, I see the tan couch, and there is some kind of
21 maroon piece, it looks like it's a piece of furniture.

22 MR. COOPER: It looks like a love seat or
23 couch as well, Judge.

24 THE COURT: And just to be clear, when law
25 enforcement went there, the defendant came outside the

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2 clubhouse. It's not like he was found sleeping in the
3 bed or anything like that.

4 MR. COOPER: That's correct, they called him
5 outside.

6 THE COURT: Were there any other what you
7 would describe as rooms with living quarters in the
8 clubhouse other than this one?

9 MR. COOPER: I would have to ask some of the
10 questions the Court has.

11 THE COURT: That is why sometimes it makes
12 sense to actually put a live witness on who can answer
13 questions, but if you want to proffer. You're welcome
14 to do that, but I'll give you a minute to get an answer
15 to my question.

16 MR. COOPER: Judge, the area that we're
17 looking at is the only area that appeared to be a
18 sleeping area downstairs was a larger clubhouse
19 recreation with a bar this up stair areas is the only
20 area that the agents identified that appeared to be like
21 a sleeping quarters.

THE COURT: Okay. Go ahead, Mr. Cooper.

23 MR. COOPER: So I referenced the list to
24 Judge Schroeder of the different areas that the Outlaws
25 maintain clubhouses as I think that pertains to the risk

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2 of flight. This is information that is listed on their
3 publically accessible website. It involves South
4 America and Brazil, and then multiple chapters, as I
5 mentioned, in more than half the states in the country.
6 I'm not going to list every clubhouse and every state,
7 it's in the transcript. But what I will tell the Court
8 as a summary is that the clubhouses accessible to the
9 defendant include a total of at least 136 chapters in
10 the United States, 14 chapters in South America, Canada,
11 France, Germany, Thailand, the Philippines, Spain,
12 Switzerland and the Czech Republic and that is just to
13 name a few. There is also a chapter opened in Russia
14 which would present a particular difficulty given
15 Russia's extradition or lack thereof extradition policy
16 with the United States. And so it's the government's
17 position that this access to clubhouses all over the
18 world and all over the country presents a unique --

19 THE COURT: The potential penalties are up
20 to fifteen years in prison, correct?

21 MR. COOPER: That is accurate, Judge.

22 THE COURT: And have you done an estimate of
23 the Guideline range?

24 MR. COOPER: Yes, Judge. The estimate of
25 the Guideline range is in the neighborhood of 33 to 41

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2 months imprisonment, so about three years give or take.

3 THE COURT: Do you have any -- well, I do
4 want to interrupt you if I have a question.

5 MR. COOPER: It's okay.

6 THE COURT: Do you have any more information
7 about the more recent criminal convictions from, I think
8 it was an assault in 2018, he was charged -- the
9 defendant was charged with disorderly conduct and
10 assault, both misdemeanors. He was sentenced to good
11 behavior and no contact with the victim. Do you have
12 any more information about the specifics of those
13 convictions?

14 MR. COOPER: I don't have more information
15 than what is contained in the bail report, your Honor.

16 THE COURT: Which I don't think is really
17 much, is it?

18 MR. COOPER: It's not, your Honor.

19 THE COURT: There is nothing about the
20 specifics, for instance, whether or not it was alleged
21 to be related to something dealing with the Outlaws
22 Motorcycle Club or was it something related to a
23 domestic violence incident, I mean, we don't know.

24 MR. COOPER: That is accurate, Judge. We
25 don't know. The information that was provided by

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2 probation is what the government has when a criminal
3 history was run for the defendant, the felony conviction
4 didn't even show up. It took quite a bit of leg work
5 due to the nature of that felony conviction to pull up
6 the certified conviction, and so I don't have more
7 details for the Court than what is contained in the
8 Pretrial Services Report regarding the assault.

9 THE COURT: What about the protection orders
10 that are referenced in the bail report? I didn't see
11 any reference to that during the hearing in front of
12 Judge Schroeder. This is on page 3 of the bail report.

13 MR. COOPER: I see it, your Honor. The
14 indication here is that it was issued in September of
15 2020 and expired in September of 2021 involving two
16 individuals. I don't want to read the names, but the
17 Court has it in front of it. I don't have more
18 information.

19 THE COURT: Or who those two individuals are
20 or how they are potentially related to the defendant?

21 MR. COOPER: One bears the last name of the
22 defendant, so that is the information I have is what is
23 contained in the Pretrial Services Report. I think
24 there is an inference that could be drawn based on the
25 common last name.

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2 THE COURT: But you don't have any?

3 MR. COOPER: Correct.

4 THE COURT: Do you have anything else?

5 MR. COOPER: Judge, what I would like to
6 focus on, and I'll keep my notes contained, and because
7 I know your Honor is familiar with the transcript before
8 Judge Schroeder, and what I'll say, the status within
9 the organization coupled with the organization's goal
10 related to witnesses, informants, undercover law
11 enforcement officers, indicates clearly that the
12 defendant poses a danger to the community and presents a
13 risk of obstruction of justice.

14 I would also note for the Court that --

15 THE COURT: You haven't proffered anything
16 to me about any obstructive acts that have occurred in
17 any capacity.

18 MR. COOPER: So the attachment for the
19 search warrant that was executed on both --

20 THE COURT: I don't have the search
21 warrants.

22 MR. COOPER: Okay. I was just going to
23 proffer to you about the statutes that were cited and
24 some of the underlying -- well, the underlying statutes
25 and enumerated offenses that were contained on the

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2 warrants when the warrants were executed, included
3 witness tampering, obstruction of justice. And so the
4 whole reason that those searches were conducted was to
5 search for evidence related to witness tampering.

When the government goes into those locations, they seize court documents, FBI sensitive law enforcement sensitive documents that talked about statements made by cooperating individuals.

10 THE COURT: You seized that from the
11 clubhouse?

12 MR. COOPER: From Mr. Ermin's house.

13 THE COURT: Let's focus on Mr. Barnes.

14 MR. COOPER: Well, Judge, they are both
15 members of the same organization with the same goal and
16 so whether things are found in the international
17 president's house or the clubhouse where he resides or
18 the area where he resides, I would submit to the Court
19 that import is the same, which is this organization is
20 keyed in on identifying people who cooperate with law
21 enforcement and addressing that if it poses a danger to
22 the organization. Any rank and file member of the
23 organization is tasked with, it's essentially a
24 paramilitary organization in the sense it has a
25 structure, there are rank and file members and members

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2 in leadership; individual leadership in a particular
3 chapter and national leadership. The person that is in
4 front of this Court is a person who is a member of that
5 national leadership part of the organization and as such
6 he is an individual that can command other members of
7 the organization to undertake tasks that protect the
8 Outlaws Motorcycle Club.

9 THE COURT: I dealt with this in the
10 Kingsmen case, and I, in fact, dealt with it several
11 times in the Kingsmen case. And my view of the Second
12 Circuit case law is just being associated with an
13 organization, even in a leadership capacity that is,
14 arguably, a violent organization or an organization that
15 engages in criminal conduct or an organization that,
16 even let's say engages in obstructive acts, is not
17 sufficient. You need to have something more linking the
18 particular defendant, whose liberty you're seeking to
19 take away without any finding of guilt and under a
20 presumption of innocence, you need to have something
21 more linking that individual to either directing others
22 to engage in violent acts or obstructive acts or
23 directing others to or personally engaging in that type
24 of conduct. And my -- I've updated my research that I
25 did I don't know how many years ago at this point, I

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2 don't think the law has changed at all. When you look
3 at the Second Circuit case law that deals with detention
4 determinations in a whole variety of context, but
5 dealing with criminal organizations and even leaders in
6 these criminal organizations, my view is you need to
7 have some evidence to detain the person based upon their
8 association in the organization. You need to have
9 evidence of that individual either personally directing
10 the criminal acts or being involved in those criminal
11 acts.

12 MR. COOPER: Judge, in this case, the
13 defendant has been charged by a Criminal Complaint with
14 possessing a firearm as a previously convicted felon.

15 THE COURT: Right. So focus on that. I
16 mean, you can focus on that. You can focus on this
17 individual's transient lifestyle. You can focus on the
18 prior criminal record, I mean, the felony is old, but
19 there is relatively recent additional criminal acts, and
20 you can argue that. I am just not going to be -- I
21 think you have an uphill battle to persuade me, without
22 something more, that just because somebody is part of
23 the Outlaws Motorcycle Club, even in a leadership
24 capacity, even, potentially, maybe even in a capacity
25 that is self identifies as being enforcers, I need to

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2 have proof or evidence that this individual has actually
3 either directed that kind of conduct or personally
4 engaged in it. I'm interested in seeing the video that
5 you referenced. I want to see that --

6 MR. COOPER: Yes, Judge.

7 THE COURT: -- before I make a decision on
8 this.

9 MR. COOPER: Understood. And as I
10 mentioned, I came over the weekend and I'm working to
11 get it. I'm sorry I don't have it for the Court today.

12 With respect to the something more, I would
13 like to pivot towards the firearm that was recovered,
14 the Glock 70 automatic, had a chamber ready to be fired
15 when it was recovered, the defendant is prohibited
16 person because he is previously convicted felon. And
17 the possession of ammunition is a crime of violence when
18 the Court is considering whether detention is
19 appropriate and we have, well, more than possession of
20 ammunition, we have a loaded Glock firearm in the
21 immediate proximity of the defendant's identification in
22 the immediate proximity of the defendant's cut or vest.
23 And as the Court is well aware, every district judge in
24 Western New York is well aware, felons in possession of
25 firearms pose an inherent risk to the community. I

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2

would couple that with the defendant's membership in the organization. And the point is well taken from the Court that membership in that organization alone, even leadership in that organization alone is not sufficient, I've heard the Court on that.

What I would proffer is that all of those things that we've discussed, coupled with the fact that here there has been a probable cause determination by the magistrate that this defendant, knowing he had previously been convicted of a felony, illegally possessed a firearm, does pose a significant danger to the community, and it's a danger that would exist for any previously convicted felon possessing a firearm. But it's a danger heightened due to the defendant's membership, leadership role, in a dangerous criminal gang that is global, not just in the Western District of New York, not just in the United States, all over the place.

So if the Court is looking for more, the loaded firearm in the defendant's area of that clubhouse, the area that he controlled, and I can offer you some solid proof on that being the area that the defendant controlled in the clubhouse. In addition to telling pretrial services that that is where he wanted

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2 to go back and live when he got out, he also made a
3 statement to the officers when he came out of the
4 clubhouse as the warrant is being executed, he indicated
5 that he had back pain. They told him they would treat
6 him respectfully. So he comes down the stairs and he
7 interacts with those officers, and he makes a statement
8 that his cell phone is at the top of the stairs that
9 leads to that same area that we looked at photographs
10 of. And his cell phone was recovered in the same spot
11 where he told officers, 4 feet away from the loaded
12 firearm.

13 THE COURT: Can you go back to the picture
14 of the area and show me where the cell phone was
15 recovered?

16 MR. COOPER: I don't know if it's in the
17 photograph.

18 THE COURT: At least tell me where off the
19 photograph it would be.

20 MR. COOPER: Sure.

21 Ms. Champoux is pulling up the photograph.

22 THE COURT: You would agree with me, this is
23 not a presumption case, correct?

24 MR. COOPER: That is accurate, your Honor.

25 So, Judge, the bottom left-hand corner of

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2 the photograph, which is the larger photograph of the
3 room with a beige couch on the right-hand side and
4 maroon couch on the left-hand side, you can see the
5 corner of the television at the bottom left-hand corner
6 of the photograph. The description that was provided to
7 me by the agent who searched that clubhouse was that the
8 cell phone was at the very stop top of the stairs on the
9 TV stand adjacent to the stairwell. And you can see the
10 TV on the TV stand on the bottom left-hand corner. And
11 I don't believe that there is a photograph that we've
12 identified that specifically shows the stairwell and
13 where it relates to the rest of the bedroom.

14 THE COURT: So you were saying that the
15 defendant when questioned by law enforcement. There is
16 another photograph. What was the other photograph?

17 MR. TRIPI: There are others in the sequence
18 if we could flip through them, 107 through 110.

19 THE COURT: The photograph that is being
20 shown right now, which we have to mark as an exhibit,
21 has a TV stand and end table with a lamp. Is that where
22 the firearm was found?

23 MR. COOPER: Yes, Judge. You can see it, if
24 you want to zoom in at the base of the lamp, you can see
25 the soft case we looked at earlier, the holster just

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2 behind the U.S. currency and the U.S. currency is
3 depicted in the same close-up photograph.

4 THE COURT: You have some photographs in the
5 exhibits of other items. Are they dangerous items? I
6 wasn't clear on what they were.

7 MR. COOPER: Yes, Judge. There are some
8 photographs -- there was some photographs that were
9 taken of different items with a padlock with a bandana
10 tied around it. The point of that, it's not a weapon if
11 you're pulled over by law enforcement, it's not like
12 having a knife or firearm. It tends to be apparently
13 innocuous.

14 THE COURT: Were any of these in the living
15 area?

16 MR. COOPER: When you say the living area,
17 you're referring to this upstairs area?

18 THE COURT: Yeah, the upstairs area.

19 MR. COOPER: I don't know. I'd have to -- I
20 would have to look at the evidence log and get back to
21 the Court on that question.

22 THE COURT: So, like, for instance, I'm
23 looking at exhibit 9D and exhibit 9E and exhibit 9F and
24 exhibit 9G. I'm assuming these are all what the
25 government purports to be other items that could be used

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2 to engage in acts of violence?

3 MR. COOPER: That's accurate, Judge.

4 THE COURT: What is 9E? It's hard for me to
5 make that out.

6 MR. COOPER: So, Judge, it's a 9E or F?

7 THE COURT: Nine E.

8 MR. COOPER: Nine E is daggers, fixed blade
9 knives with ribbon on them to withdraw them from the
10 pouch.

THE COURT: To what?

12 MR. COOPER: To withdraw them from the
13 pouch, essentially, to be able to remove them from the
14 pouch.

15 THE COURT: And 9 D looks like some kind of
16 paddle.

17 MR. COOPER: That's correct, Judge. And 9F,
18 similar to that bandana with the padlock on it is like a
19 cord, a lock with a metal buckle or metal fixture on one
20 end.

21 THE COURT: And do you know, Mr. Cooper, if
22 9 D, 9 E, 9 F and 9 G were found in the living area or
23 were they found in other parts of the clubhouse?

24 MR. COOPER: I could get that answer for
25 you. I don't know it right now.

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2 THE COURT: Okay. You were saying, though,
3 I think just before we went down this road, that when
4 the defendant was questioned by law enforcement, he
5 denied that there were any firearms in the clubhouse.

6 MR. COOPER: That's correct, Judge. And
7 it's a statement that is entirely inconsistent with
8 where his personal belongings, including his wallet with
9 his identification and Social Security card, were in the
10 immediate proximity of the firearm and the firearm is
11 out in the open. So even hypothetically assuming that
12 it wasn't his, there is no way he didn't know it was
13 there. And yet he tells law enforcement, "not that I'm
14 aware of." I believe the statement is, do you have --
15 are there any firearms or anything dangerous in there.
16 I think they ask about booby traps, and the defendant
17 first says, "not on me." And then they clarify, they
18 being the agents, that they are referring to inside as
19 well. And his statement was, "not that I'm aware of,"
20 which is obviously not true given the plain view of the
21 firearm and near his personal belongings. And that is
22 the sort of conduct, and granted he is not required to
23 answer their questions, but from the nature of the
24 statement should give this Court concern when U.S.
25 Probation, if the defendant is released, when U.S.

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2 Probation is going to do checks and asking questions.

3 Additionally, Judge, I spoke with Special
4 Agent Bender today, who is one of the agents that was
5 present at the search of this clubhouse, and he
6 indicated that there were plastic bottles, I think he
7 described them as hospital urinals, I'm not sure.

8 THE COURT: Hospital urinals?

9 MR. COOPER: Like a plastic container to
10 store urine.

11 THE COURT: Like a cup?

12 MR. COOPER: Like a jug with a lid on it
13 that can be used for a patient that can't get out of bed
14 to urinate in them. They were labeled or had affixed on
15 them, "clean urine." The only reason to store clean
16 urine or to mark it as "clean urine" is if there is an
17 intent to use that to pass a drug test when you
18 otherwise --

19 THE COURT: Was the urine in there?

20 MR. COOPER: I believe there was urine in
21 one and no urine in another one.

22 THE COURT: Has the urine been tested.

23 MR. COOPER: No, Judge. But the marking of
24 it as clean urine, again, should give this Court pause
25 in determining whether the defendant is going to follow

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2 any conditions of release that were set. We have been
3 dishonest about whether there are weapons in the house.

4 THE COURT: Where were the jugs that say
5 "clean urine" found?

6 MR. TRIPI: We have a photo ready for you.

7 MR. COOPER: Can we pull it up?

8 THE COURT: And all of those pill bottles
9 around that, do we know what those are?

10 MR. COOPER: Judge, I don't know yet what
11 those are. There are hundreds and hundreds of items of
12 evidence that were seized with five separate search
13 warrants.

14 THE COURT: Can we blow that up?

15 What does that say on it?

16 MR. COOPER: The last name is Barnes, first
17 name Scott. They appear to be prescriptions from
18 Walmart and the defendant did represent at the detention
19 hearing that he had had back surgery and was taking
20 medication as a result of that. And the government
21 didn't proffer it to the Court that these pills were
22 illegally obtained.

23 THE COURT: If you're citing to the urine as
24 evidence of somebody being up to no good, I would think
25 it's kind of relevant that the defendant's prescription

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2 bottles are right next to it.

3 MR. COOPER: Sure, Judge, absolutely. So I
4 didn't make that connection myself, but --

5 THE COURT: Do you know where these were
6 found? Was this in the living area or in other parts of
7 the clubhouse or do you not know?

8 MR. COOPER: I don't know the answer right
9 now, Judge, but I can find out.

10 THE COURT: You can find that out?

11 MR. COOPER: Yes.

12 THE COURT: What is that machine that is
13 next to that shelf there?

14 MR. COTTER: If I may, it's a CPAP machine
15 for people that have sleep apnea.

16 MR. COOPER: Which I believe the defendant
17 has indicated that he has sleep apnea and needs the CPAP
18 machine, so it's -- I'll leave that to Mr. Cotter.

19 THE COURT: Okay. So we can take that down,
20 Karen, please. Thank you.

21 Do you have anything else?

22 MR. COOPER: Well, Judge, I guess I'll just
23 finish the point that I started to make in summary which
24 is the Court should consider the 922(g) offense, the
25 dangerousness of the firearm in association with the

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2 other evidence, the association evidence that we've
3 spoken about as that goes under 3142 to this defendant
4 as an individual. His membership in this organization
5 is something the Court can take into account. I'm not
6 asking the Court to detain the defendant solely based on
7 membership in that organization, but coupled with the
8 charges contained in the Criminal Complaint, the
9 inherent dangerousness of felons who possess firearms.

10 And if I can have just one second to confer.

11 THE COURT: Sure.

12 MR. COOPER: So, Judge, there is one last
13 exhibit that I would like to bring to your attention and
14 that is in Government's Exhibit 11-A, and this is
15 information that is seized in the clubhouse.

16 Ms. Champoux, if we can bring up 11-A.

17 Judge, this document, it shows a variety of
18 paperwork that was seized from the clubhouse and it
19 includes confidential reports from the clubhouse.

20 THE COURT: Can you give me more
21 information? You say confidential source reports from
22 law enforcement, like how long ago? Do we know what
23 case it involved? Do we know what the source of the
24 document is? Do you understand my question?

25 MR. COOPER: I do understand the Court's

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2 question. So it appears there is an exhibit sticker in
3 the top right corner of this one, there is a date of
4 August 29th of 1990.

5 THE COURT: 1990?

6 MR. COOPER: That is correct, Judge. That
7 is the date in the top right corner where it's the date
8 of investigation.

9 THE COURT: So we're talking like almost 40
10 years ago.

11 MR. COOPER: Thirty-three years ago.

12 THE COURT: Okay.

13 THE COURT: I mean, I guess, you know, I
14 don't think it's any secret that motorcycle clubs, at
15 least in my experience, monitor court proceedings. I
16 think motorcycle clubs may argue they do this because
17 the government is intent on trying to prosecute
18 motorcycle clubs for RICO or other types of crimes.
19 And, you know, there is nothing -- these maybe are not
20 public, but documents that are public or court
21 proceedings that are public, I mean, the public, they
22 have every right to monitor, especially if it's
23 something that relates to them. Something from 1990
24 doesn't seem as though it's particularly timely.

25 MR. COOPER: Well, Judge, as opposed to

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2 looking at these items in isolation, I would urge the
3 Court to look at the items in the context of the
4 organization that possessing them. Again, not to beat a
5 dead horse, an organization with mottos like "God
6 forgives and Outlaws don't" and "snitches are a dying
7 breed," I think it's clear, if you're looking at it in
8 the context of the organization who is possessing the
9 documents, why they are. We'll note a documentation was
10 seized, which was a confidential informant report or
11 what was seized had confidential source report with
12 notations on it. Apparently somebody trying to put
13 together who the confidential source.

14 THE COURT: But this is from 1990?

15 MR. COOPER: The one that we zoomed in on
16 was from 1990, there is another one from 1996 on the far
17 left side of the document.

18 THE COURT: We wouldn't even know if Mr.
19 Barnes was involved in the Outlaws Motorcycle Club at
20 that point.

21 MR. COOPER: Sure, Judge, but the point
22 remains the same, which is that it's a club with access
23 to members all over the country with a stated purpose of
24 snitches are a dying breed, and then you have
25 confidential source reports found in the clubhouse. I'm

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2 asking the Court to view it in the proper context based
3 on what the Court knows about the organization and you
4 don't have to draw any inferences there, it's how they
5 hold themselves out, it's their own words.

6 THE COURT: Okay. Anything else?

7 MR. COOPER: No, thank you, Judge.

8 THE COURT: All right. Mr. Cotter, I mean,
9 I can tell you right now, Mr. Cotter, I'm not going to
10 make a decision today. So, and I know the government
11 has presented some information that is new, some
12 photographs that were new. I want to look at this
13 video. You can either proceed right now or we can come
14 back another time and address it. It's up to you.

I mean, I'm not going to make a decision today. I do want to look at this video. Presumably you're going to want to respond to whatever is depicted on the video and -- we can do it one of two ways. You can proffer something today, and I can get the additional information that I've asked from the government and then I could issue a written decision, but that wouldn't afford you an opportunity to respond to anything that the government offers after today, including specifically this video.

25 MR. COTTER: May I approach?

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2 THE COURT: Of course.

3 MR. COTTER: One of the first things that
4 was going to come out of my mouth is an objection to the
5 fact that they are layering into the record things that
6 were not put before Judge Schroeder --

7 THE COURT: Doesn't matter.

8 MR. COTTER: -- of which I had no prior
9 knowledge.

10 THE COURT: You definitely need prior
11 knowledge, you need an opportunity to respond to it, and
12 you need an opportunity, if you want time to do it, I'll
13 give it, they can offer evidence that wasn't introduced
14 to Judge Schroeder in front of me.

15 MR. COTTER: If it does not annoy the Court,
16 what I would like to propose that I do get to respond to
17 some of the proffering today and then reserve the right
18 to respond to the video when I get to see it.

19 THE COURT: Sure. That's fine.

20 You can have a seat, Mr. Cooper.

21 MR. COOPER: Thank you. I'll leave this up
22 here.

23 THE COURT: Okay.

24 MR. COTTER: I am a little bit confused that
25 there appear to be two docket numbers associated with

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2 this case and I did electronically file and that could
3 be because it switched from Buffalo to Rochester. I
4 don't know.

5 THE COURT: So this case is not indicted at
6 this point, so all it has is a Criminal Complaint and
7 that is assigned a magistrate judge number and that is
8 assigned the 23MJ166 number. But if there is an appeal
9 then from a magistrate judge determination that has to
10 go to a district judge, that is when it gets assigned to
11 the MR number. And so the MR number is what effectuates
12 getting the case assigned to a district judge.

13 MR. COTTER: Okay. Before we started today,
14 I asked Mr. Cooper if he had received a copy of the
15 motion the Court referenced that I filed last Thursday
16 and he had not yet seen it.

17 THE COURT: Well, it's on the docket, I've
18 seen it.

19 MR. COTTER: Okay. I explained it to him.

20 THE COURT: This was filed in the MJ case at
21 docket 4 and it is a motion for the return or release of
22 personal property and the use of a CPAP machine
23 medication. Right?

24 MR. COTTER: Correct.

25 THE COURT: That is what you're referencing?

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2 MR. COTTER: Yes.

3 THE COURT: I have that in front of me.

4 MR. COTTER: One of the things that was
5 present before Judge Schroeder was a letter, I believe
6 undated, but I have the fax cover letter from one of Mr.
7 Barnes' physicians who did just perform back surgery on
8 him.

9 THE COURT: I haven't seen that.

10 MR. COTTER: November the 14th. The
11 government has a copy, if I may hand it up the Court.

12 THE COURT: Is this a copy for me to keep?

13 MR. COTTER: Absolutely. I don't have an
14 exhibit tag or a sticker.

15 THE COURT: Thank you. Okay.

16 MR. COTTER: All right. And if we can stay
17 on that vein, the urinals that Mr. Cooper represented
18 that are present in the picture, we don't have a
19 designation of that exhibit up, but what I would proffer
20 back to the Court is if one has just had back surgery,
21 one has limited mobility. And this is Mr. Barnes'
22 second back surgery in 2023. He broke his back in March
23 of 2023 while he was in Florida. He was involved in a
24 motorcycle accident. He lost feeling in his legs. Two
25 days after that accident, that is when the first surgery

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2 occurred in order to prevent paralysis. He convalesced
3 for several months. He finally went back to work
4 sometime in the fall of 2023, not at work, but a day
5 following his return to work, he fell and bent the
6 titanium rod that had been inserted into his back, which
7 is why we have the November 2023 surgery.

8 The urinals that are in the photograph that
9 was up before the Court a few moments ago are clearly
10 hospital urinals and used primarily by males in order to
11 discharge urine without having to get out of bed. I
12 submit to you that it would make sense that if it
13 doesn't have any urine in it, it means it's been cleaned
14 out. If it's filled with urine, like one of the ones in
15 the picture is, it's not obviously not something that
16 somebody is going to use to drink nor in a place of
17 social gathering where alcohol is served is it going to
18 be used as a receptacle for alcohol if it has the word
19 "urine" on it.

20 All right. Briefly speaking, I don't have a
21 case cite for you because I didn't know we were going to
22 have a name of a DEA agent who has been qualified to
23 testify in God knows how many cases, but I do understand
24 that that agent --

25 THE COURT: I think it was ATF.

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2 MR. COTTER: ATF, sorry. Jeremy Sheetz was
3 apparently disqualified as an expert witness in a case
4 involving a gentleman with the last name of N-o-e, Noe.
5 And all I know that it was in the District of
6 Massachusetts, but I don't know a year and I do not have
7 a cite for the case.

8 THE COURT: Can you get that?

9 MR. COTTER: I'd be happy to.

10 THE COURT: Okay.

11 MR. COTTER: I would assume I can.

12 THE COURT: You can try.

13 MR. COTTER: The internet and I sometimes
14 get along.

15 THE COURT: Well, do your best.

16 MR. COTTER: Now, Mr. Cooper made reference
17 to facts or allegations with respect to letters that
18 were in the clubhouse that certainly made a reference or
19 what he believes to be a reference to Mr. Barnes. But
20 given that, A, we don't have the letter, we don't know
21 what was said in the letter that was sent out to
22 whomever or wherever, what the context is and we don't
23 know anything other than there is something that
24 somebody saw and I think this is what I believe the
25 Court should take from it.

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2 THE COURT: One of the letters refers to the
3 letter writer and Mr. Barnes both being members of the
4 BBT. And then the other letter from this Mr. Rosga
5 refers to Mr. Barnes and Mr. Ermin getting together with
6 Mr. Rosga once he is released, if I understand it
7 correctly.

8 MR. COTTER: Okay. But there is an
9 indication at least or belief by the government that
10 there was correspondence that went out of which we have
11 no knowledge what was inside the correspondence that
12 went out and we have no idea how the letter that was
13 received references back to the letter that went out.

14 THE COURT: Mr. Cooper, can you clarify
15 where those letters were found? Were they in the
16 clubhouse or Mr. Ermin's house?

17 MR. COOPER: Judge, the letters we're
18 referring to are letters that were recovered in either a
19 duffle bag or backpack in the same area that we've
20 looked at with the firearm, Mr. Barnes personal
21 identification, wallet, it's up in that same area.

22 THE COURT: And I take it you could provide
23 the Court and Mr. Cotter with copies of the letters?

24 MR. COOPER: Not today, Judge. I don't
25 believe they have been scanned. We went after the

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2 searches were executed.

3 THE COURT: I didn't say today. You can
4 provide me copies of the letters?

5 MR. COOPER: Absolutely, Judge.

6 And just to clear up on the Noe, N-o-e,
7 case, I can give the Court the detail regarding that
8 case. It's from the County of Bristol in Massachusetts.
9 And the Court didn't allow the testimony because it was
10 deemed to be not significant because there were other
11 witnesses who had testified about the same information
12 that the expert was going to testify. The expert
13 witness was not disqualified on the basis of a lack of
14 expertise.

15 THE COURT: Was it a state court case or
16 federal court?

17 MR. COOPER: State court case, Judge, the
18 Commonwealth of Massachusetts.

19 THE COURT: You don't have a cite?

20 MR. COOPER: No, Judge. I'm looking at the
21 curriculum vitae and County of Bristol, Commonwealth v
22 Joseph Noe.

23 THE COURT: Can you provide me and Mr.
24 Cotter a copy of the CV?

25 MR. COOPER: Yes, Judge.

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2 THE COURT: Okay. Thank you. Go ahead, Mr.
3 Cotter.

4 MR. COTTER: Now, both before Judge
5 Schroeder and yourself, the government has provided
6 exhibits that I believe I wrote down as 1-AC and 1-AD.
7 These are pictures alleged or at least represented to be
8 of individuals in Brazil with notations on the back of
9 the photograph. Does the Court recall that?

10 THE COURT: Yes.

11 MR. COTTER: We don't know who wrote
12 anything on the back of the photograph. We don't know
13 the individuals are in the back of the photograph. We
14 don't know who drew the blue arrows. There is a sticky
15 note to the image to the left of the photograph, we
16 don't know who wrote on the sticky note.

17 The Court had some questions about whether
18 or not we even know whether or not Mr. Barnes was a
19 member of the motorcycle club back in 1990 or 1996, we
20 don't. We do know, however, I do, that Mr. Barnes is a
21 member of another organization called International
22 Brotherhood of Electrical Workers, that is how he made
23 his living through his adult life. He is now 55 years
24 old. He came to Western New York from Eastern
25 Massachusetts, which I submit to the Court is a far more

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2 expensive place to live than here. I am aware of other
3 members of --

4 THE COURT: Especially if you're living in a
5 clubhouse, I suppose, right?

6 MR. COTTER: Well, Judge, if you can't work
7 because he has had the back surgeries, it makes sense.

8 THE COURT: Okay.

9 MR. COTTER: All right.

10 THE COURT: Are you proffering that he has
11 lived in any other location in Western New York?

12 MR. COTTER: Yeah, he has had residences.

13 THE COURT: Other than the clubhouse?

14 MR. COTTER: Right. Offhand, I don't know
15 the street addresses, but there are street addresses
16 that I do not know as I stand here. I can turn around
17 and get them.

18 THE COURT: Sure, if you want. It's up to
19 you.

20 MR. COTTER: Sure. Just give me a second.

21 Without the glasses, it's not going to work.
22 19 Gratten Street, G-r-a-t-t-e-n, Buffalo, I didn't get
23 a zip. But as I understand the sequence of events,
24 Judge, when his back -- when he broke his back in March
25 of '23, he was not able to work for a considerable

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2 period of time after that and didn't have the resources.

3 THE COURT: He was living in Western New
4 York at that time even though the accident occurred in
5 Florida?

6 MR. COTTER: He was in Daytona Beach for
7 something called "Bike Week."

8 THE COURT: Yes.

9 MR. COTTER: I'm unfamiliar with.

10 THE COURT: I am familiar with it.

11 MR. COTTER: As I understand it, it's a
12 group of people that are all associated with motorcycles
13 that go down to Daytona Beach.

14 THE COURT: So, in other words, he was
15 living in Western New York, went down for "Bike Week"
16 and broke his back during "Bike Week."

17 MR. COTTER: And came back to Western New
18 York.

19 THE COURT: Okay.

20 MR. COTTER: I've been in touch and spoke
21 with his attorneys in Florida who are suing. What
22 happened on the bike was a pothole, but there is an
23 active lawsuit or at least a lawyer's investigation.
24 That last name of the lawyer who runs the firm is
25 Keller. Keller is originally from Buffalo, relocated to

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2 Florida. And I spoke with somebody in his law firm and
3 they are aware of Scott and aware of his situation, not
4 necessarily in custody today, but that he is a Plaintiff
5 or will be a Plaintiff in a negligence case involving
6 whomever owns the street. I don't want to say State of
7 Florida, whatever municipality it is. My understanding
8 is that Mr. Barnes moved from Eastern Massachusetts to
9 Western New York sometime in 2022, I don't have the
10 month.

11 Before Judge Schroeder was proffered it was
12 shortly after a case involving a guy named Gerace or
13 Gerace, which I believe bears a 2019 docket number. The
14 indication or at least proffered to Judge Schroeder was
15 that Mr. Barnes arrived in Western New York shortly
16 after the Gerace indictment dropped in 2019. And that
17 he is the national enforcer, et cetera. Part of me
18 thinks that is hokum because one --

19 THE COURT: I'm not familiar with that word.

20 MR. COTTER: I was going to say "bunk."

21 THE COURT: I'm familiar with that word.

22 MR. COTTER: Okay. All right. If in fact
23 Mr. Barnes or if this indictment, because that is really
24 what the government hasn't said to you today, but that
25 is all they said to Judge Schroeder, is that because of

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2 this Gerace and Bongiovanni case, they are worried that
3 witnesses are going to be intimidated. They see a huge
4 correlation between Mr. Barnes and this other case in
5 Buffalo. But if the government's proffer to Judge
6 Schroeder is correct and Mr. Barnes came here in 2019,
7 where is the evidence that he is obstructing anyone.
8 Where is the evidence that he has done anything.

9 You're on the bench, I'm a defense lawyer.
10 We've all seen how the government puts together their
11 cases. We have wiretaps, video and pole cameras. And
12 we have more evidence -- we have phones -- than I have
13 ever wanted to see. As a defense lawyer, that is the
14 standard case that the federal government brings against
15 an individual. The United States against Scott Barnes,
16 we have innuendo. We have association and we have
17 nothing more.

18 In the Criminal Complaint, Judge, it says
19 that the clubhouse was under surveillance from, I
20 believe, November 6th until the arrest on December 7th.
21 All right. The Criminal Complaint is completely devoid
22 of any factual allegations of any illegal activity
23 undertaken by Mr. Barnes in that 30-day period of time.
24 There is no obstruction, there is no flight, there is no
25 anything. All right. Normally we would expect that

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2 they would have that kind of evidence. It isn't here.
3 It is a guilt by association case on this aspect. On
4 the detention thing, I submit it's fundamentally unfair
5 and almost to the point of cruel to try and keep this
6 guy locked up when what he really needs is medical
7 attention and physical therapy.

8 He doesn't have the financial means to go
9 anywhere. He doesn't have a passport. He does have an
10 enhanced license, which is more than happy to surrender.
11 Without those exit documents, he can't really get out of
12 the country. He can't board a plane, he can't, you
13 know, drive through Mexico and get through Guatemala or
14 whatever to get to Brazil; it's just not possible. He
15 can't fly to any of the clubhouses overseas, whether
16 they are in Asia or Europe or Western Europe or Eastern
17 Europe. Those funds don't exist. The prospect of risk
18 of flight, it's nonsense. All right. And in terms
19 of --

20 THE COURT: You had indicated in front of
21 Judge Schroeder, and, I think, you know, probation's
22 recommendation for release is conditioned upon him
23 residing in an acceptable location. And is there a
24 proposed acceptable location?

25 MR. COTTER: We don't know that answer yet.

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2 And the folks here from pretrial services are not the --
3 and I don't have my file in front of me. I know his
4 name is Antone, but that is the first name, pretrial
5 services officer who is in Buffalo. I have provided
6 that gentleman with a proposed address.

7 THE COURT: Oh, you did.

8 MR. COTTER: And the individual standing
9 behind me that you indicated you're familiar with from
10 another case that you had, that is the individual that
11 owns the house. He is here to talk to anybody who wants
12 to talk to him about the residence.

13 THE COURT: Okay.

14 MR. COTTER: To my knowledge, he has not yet
15 been contact by pretrial services. They have not gone
16 into the residence to see whether or not --

17 THE COURT: Do we have a name of who owns
18 it?

19 MR. COTTER: It's in my file. And what I
20 can tell you is the last name has more vowels in it than
21 consonants and it's dramatic. But I don't want to
22 offend anybody by trying to pronounce it. I believe
23 it's Gary, it's Elsaesser. It's Keith, I'm sorry. And
24 I'll pronounce it as Elsaesser. I spelled it
25 E-l-s-a-e-s-s-e-r.

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2 THE COURT: Okay.

3 MR. COTTER: Street address proposed to
4 pretrial was 39 Peoria Street, Buffalo, New York, zip
5 14207, lower unit.

6 THE COURT: You've got your gentleman in the
7 back is trying to signal to you.

8 MR. COTTER: He says 37, I may have
9 misspoke.

10 THE COURT: You said 39.

11 MR. COTTER: Thirty-seven.

12 Then somebody should treat my handwriting
13 how to be more visible. I had 37 written in front of me
14 and if I misspoke I'm not trying to send anybody to the
15 house next door.

16 THE COURT: Fair enough.

17 MR. COTTER: All right. Also, Judge, in
18 terms of this proximity argument, and I don't have the
19 benefit, but the picture was up that shows the couches
20 and the TV, and you can see in the far side of the room
21 there are beds that are on the other sides of the
22 couches.

23 THE COURT: Are there beds or just one bed?
24 Looked to me like one bed.

25 MR. COTTER: As I understand it, Judge,

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2 between those large black totes with. I believe, yellow
3 tops, on the far side between the window and those totes
4 is a bed.

5 THE COURT: That you can't see in the
6 photograph.

7 MR. COTTER: You can see the foot of it.

8 THE COURT: Oh, okay.

9 MR. COTTER: I assume the foot, might be the
10 head.

THE COURT: Okay.

12 MR. COTTER: But that is the far side of the
13 room. And I believe that as you look down that room
14 with that bed on the lower far left-hand corner, on the
15 far right-hand side of the wall, are those plastic
16 shelving units that contain Mr. Barnes' legally
17 prescribed pain medication.

18 THE COURT: Could we pull the photograph up?
19 It's easier for me to follow what you're saying as we're
20 looking at it.

21 MR. COOPER: We're going to work on getting
22 that up for you, Judge. If you just give us one second.

23 MR. COTTER: In order to look, because we
24 don't get there.

THE COURT: Go over there, that's fine.

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2 MR. COOPER: One second.

3 MR. COTTER: I'm mistaken, the plastic
4 shelving units, at least from what I can gather, do not
5 appear to be --

6 THE COURT: Ms. Champoux, can you blow that
7 up?

8 So is your point that in the back there
9 where the little cursor is on, that that is another bed.

10 MR. COTTER: That is what my understanding
11 is. If you see the four outlet wall sconce with one
12 plug in it, I believe that that described material where
13 the hand image is now that that is a bed and that is a
14 bed. And if I can check one point.

15 THE COURT: Sure.

16 MR. COTTER: If we can zoom in a little bit,
17 Judge, to the left of the window. And we can stop
18 there.

19 The shelving unit that I referenced that had
20 the urine in it, that had the prescription medication in
21 it, that had the CPAP machine in it, that is all in that
22 shelving unit right between the bed and the wall.

23 THE COURT: Okay.

24 MR. COTTER: Where the gun is found is the
25 far end of the room at the top of the stairs. They keep

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2 saying in close proximity.

3 THE COURT: Well, I think what the argument
4 is it was in close proximity to where the cell phone
5 that your client identified with was located. If that
6 was located on the TV stand, that is more -- can you
7 zoom out? Thank you.

8 That is more on the forefront of the room.

9 MR. COTTER: And as I understand it, Judge,
10 as agents entered the property, Mr. Barnes started to
11 exit. They communicated. He was asked if he had
12 anything in his hands, he said "I have a phone." They
13 told him to put it down and that is where he put it
14 down.

15 THE COURT: Okay.

16 MR. COTTER: All right. What is missing
17 from the gun, Judge, again, a federal government,
18 criminal prosecution, do we have any fingerprints?

19 THE COURT: They are not going to have that
20 at this point.

21 MR. COTTER: Do we have any DNA? We don't.

22 We also know from the presentation they gave
23 Judge Schroeder there was a lot of guns in this other
24 guy's house. This is a clubhouse that has more than one
25 member. Is Barnes staying there while convalescing.

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2 Barnes is staying there while convalescing. Is he
3 responsible for everything in there? Not necessarily.

4 THE COURT: And I think that is certainly a
5 fair argument with respect to the rest of the clubhouse,
6 but this appears to be one living area, and I think the
7 government's best argument, quite frankly, is that there
8 was a loaded glock found in the living area where your
9 client was clearly residing, and your client could not
10 lawfully possess a firearm. That is why they brought
11 charges based on that charge. They haven't, at this
12 point, filed charges related to activity in connection
13 with the Outlaws Motorcycle Club.

14 MR. COTTER: Not that I'm aware. But I know
15 the Court queried of Mr. Cooper whether or not this is a
16 presumption case. And I submit, in part, it is,
17 particularly at this detention, that he is presumed
18 innocent and he is also entitled to a reasonable bail.
19 And I think that the proposals or the ruling that Judge
20 Schroeder made was certainly both. He will appear in
21 court as directed and required. He is not a risk of
22 flight, and he is not a danger to anybody. And if it's
23 okay with the Court, what I would like to do is reserve
24 any further argument until after we see the video. And
25 I don't know if you want to do it in person or if you

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2 want to do it on paper.

3 THE COURT: You tell me, and we can play it
4 by ear. I guess the question I have for the government
5 is how long, how quickly can you get me the video? I'd
6 like the CV, the video, copies of the letters that were
7 referenced, and I would also like you to mark the other
8 photographs that we looked at here in court today and
9 provide copies to both me and Mr. Cotter.

10 MR. COOPER: Yes, Judge. The CV I will be
11 able to e-mail it today, and I have it in the e-mail
12 account. The letters I would ask for the end of the
13 week so we can go back to FBI and get them copied. I
14 don't believe they have been scanned or copied, and I
15 have the original. It will take a couple of days for us
16 to get that and get it scanned and get it over. And to
17 be clear, a copy of the letter or letters, I believe,
18 two letters that we referenced in court today. Not the
19 dozens of letters that were seized, just the pertinent
20 ones.

21 THE COURT: Right. The ones you referenced
22 in court. I think two letters. One referring to the
23 BTT and one referring to the or the BBT, and one
24 referring to the letter from Mr. Rosga.

25 MR. COOPER: That's correct, Judge. And

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2 those two, I'll get and send them to Mr. Cotter and the
3 Court. And then the video, I'll work with Special Agent
4 Melchiorre to obtain a copy of it and I'll work to do
5 that this week as well and get it over to the Court and
6 Mr. Cotter.

7 THE COURT: And so you tell me, Mr. Cotter,
8 if the government gets us that material by the end of
9 this week, do you want to respond in writing or would
10 you prefer to have another in-person appearance? Video
11 is tough to respond to in writing, quite frankly,
12 because, you know, it's easier to discuss a video if
13 you're looking at it being displayed.

14 MR. COTTER: Judge, that is a well taken
15 point. And I don't know how to respond to the Court's
16 question. I don't know that an appearance will be
17 necessary. I don't know if further argument will be
18 necessary until I see it.

19 How about if we say we'll do it in person
20 unless there is an indication that it's deemed not
21 necessary.

22 THE COURT: Okay. Why don't we do this?
23 Let's set another appearance date, okay? And if, upon
24 receiving the additional information from the government
25 you decide, Mr. Cotter, that you can just respond in

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2 writing, and there is not a need for an additional
3 appearance, just tell me that and we can arrange for
4 that, and then I'll issue a written decision, or if we
5 have a further in-person appearance, I may rule from the
6 bench at that point. Okay?

7 MR. COTTER: Yes.

8 MR. COOPER: Your Honor, before we schedule
9 something, may I just respond to one point about that 19
10 Gratten address that was discussed while Mr. Cotter --

11 THE COURT: Yes.

12 MR. COOPER: So that 19 Gratten address was
13 in 2021, the same year that the defendant represents
14 that he was living there, was searched because another
15 Outlaw --

16 THE COURT: I don't know has he represented
17 that he was living there in 2021.

18 MR. COTTER: No.

19 THE COURT: The representation was that he
20 moved here in 2022.

21 MR. COOPER: Okay. Well, the residence that
22 he represented that he was living in before the
23 clubhouse, that 19 Gratten address was searched in March
24 of 2021. It's the residence of another member of the
25 Outlaws, PJ Raslawski, and firearms were seized from the

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2 residence at that time. So to the extent that he
3 resided there previously, I thought it was pertinent
4 information for the Court to know.

5 Secondly, when the government proffered to
6 Magistrate Judge Schroeder that the defendant came here
7 around the same time as the Gerace indictment, that
8 wasn't the 2019 Bongiovanni indictment, it was in
9 reference to the 2021 Gerace indictment.

10 THE COURT: When in 2021 was that?

11 MR. COOPER: Judge, I believe that there is
12 a photograph of the defendant --

13 THE COURT: No. When was the indictment
14 against Mr. Gerace returned?

15 MR. TRIPPI: May I just answer? The
16 indictment was returned February 28th, 2021. Mr.
17 Gerace, I believe, was arrested in Florida on or about
18 March 5th, 2021 is when it became public.

19 THE COURT: So, in other words, Mr. Gerace
20 was not charged in that case until 2021?

21 MR. TRIPPI: That is correct.

22 THE COURT: Okay.

23 MR. COOPER: Sorry. I just wanted to clear
24 up that point as well. And then if we're going to have
25 a decisional in-person appearance, I'll get these videos

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2 and letters and the curriculum vitae over to everybody
3 as quickly as possible and we'll be prepared.

4 THE COURT: And I'm going to set another
5 date for an in-person appearance. Once the information
6 is produced, if Mr. Cotter doesn't feel the need for an
7 in-person appearance, let me know that. If the
8 government feels otherwise and has something else you
9 want to argue, then tell me that and we'll -- you'd have
10 to both agree that we're not going to do an in-person
11 appearance in order for it to be put off.

12 MR. COOPER: Okay. If we're keeping it
13 open, I'll stay in contact with Mr. Cotter and we'll let
14 the Court know what our position is as well.

15 THE COURT: Okay. So what is your schedule
16 like next week? It would be here in Rochester. I can
17 tell you I'm in Buffalo, but not until January 8th, and
18 I'm assuming you don't want to wait that long.

19 MR. COTTER: I do not. With the exception
20 of the evening of the 26th, I've got dinner plans, other
21 than that, I'm wide open.

22 THE COURT: Mr. Cooper?

23 MR. COOPER: The Court is looking at next
24 week, correct?

25 THE COURT: Mm-hmm.

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2 MR. COOPER: Judge, I'll be here any day
3 next week that you need me to be here except Monday.
4 I'll be in trouble if I come here Monday.

5 THE COURT: The Court is closed Monday.

6 MR. COOPER: Good.

7 THE COURT: We do shut down for Christmas.
8 What about the 27th, that is a Wednesday?

9 MR. COTTER: I do live about 50 miles west
10 of Buffalo.

11 THE COURT: Do you really?

12 MR. COTTER: I do.

13 THE COURT: Sorry about that.

14 MR. COTTER: So am I.

15 THE COURT: Well, I've made enough trips to
16 Buffalo over my tenure that I don't feel too bad about
17 it, but what time would you prefer?

18 MR. COTTER: If you can give me 10 o'clock
19 or after.

20 THE COURT: Why don't we say 11 a.m. on
21 Wednesday, December 27th. The government will get this
22 additional information to everybody, I'd prefer it by
23 the end of the day on Thursday, if possible. The Courts
24 are closed on Friday, so end of the day Thursday. But
25 if you run into an issue, let me know and let Mr. Cotter

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2 know and we'll see what we can do. Okay?

3 MR. COOPER: Understood, Judge.

4 And with respect to the video -- the other
5 things will be easy to send via e-mail. With respect to
6 the video, I've had trouble in the -- I'll work to get a
7 hard copy delivered to the Court and I'll make a hard
8 copy available at my office for Mr. Cotter.

9 THE COURT: Sometimes your office will
10 arrange for your office here to have it and deliver it
11 to me.

12 MR. COOPER: It's a great idea, I'll do
13 that, Judge.

14 THE COURT: But for Mr. Cotter, work with
15 him to be able to have him take a look at it.

16 MR. COOPER: We'll figure it out for sure.

17 THE COURT: And as I said, I'll reserve
18 decision at this point.

19 Anything else, Mr. Cotter?

20 MR. COTTER: Not at this time.

21 THE COURT: Mr. Cooper?

22 MR. COOPER: No, thank you, Judge.

23 THE COURT: And anything from probation?

24 PROBATION: Yes, Judge. As part of the
25 original bail report, it does indicate in there that the

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2 defendant find suitable housing prior to his release.
3 We'll do a quick investigation on the proposed address
4 to the Court as well as meet with Mr. Elsaesser briefly
5 after to get more information regarding his contact
6 info.

7 THE COURT: Thank you, Officer Zeller.

8 MR. COTTER: And if I could clarify, the
9 probation pretrial services is Andre McCray.

10 THE COURT: Yes. But it looks like you're
11 looking into this now.

12 PROBATION: Yes, Judge. We will contact
13 Buffalo office.

14 THE COURT: They talk to each other
15 sometimes.

16 PROBATION: Very good, thank you.

17 THE COURT: Thank you, everybody.

18 MR. COTTER: Thank you, Judge.

19 MR. TRIPPI: May I ask a housekeeping matter.
20 There is a third defendant who is charged in a separate
21 complaint, but he was part of the same series of search
22 warrants. We filed for a stay, should that be related
23 to your Honor or?

24 THE COURT: Well, have you already filed it?

25 MR. TRIPPI: I don't believe we filed and

1
2 prepared the stay and it was granted for 24-hours
3 earlier today until tomorrow.

4 THE COURT: I would just use your normal
5 procedures and the Court will handle it however we
6 decide.

7 MR. TRIPI: Okay, thank you.

8 * * *

9 CERTIFICATE OF REPORTER

10
11 I certify that the foregoing is a correct transcript
12 of the record of proceedings in the above-entitled
13 matter.

14
15 S/ Karen J. Clark, RPR
16 Official Court Reporter
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